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October 26, 2007

BY HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
c/o Natek, Inc.
236 Massachusetts Avenue, N.E.
Suite 110
Washington, DC 20002

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Federal Communications Commission
Office of the Secretary

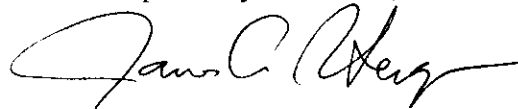
Re: Reply to Opposition to Petition for Reconsideration
of the *Seventh Report and Order on Advanced Television Systems*,
MB Docket No. 87-268, on behalf of Corridor Television, LLP,
Licensee of KCWX, Fredericksburg, Texas

Dear Ms. Dortch:

Transmitted herewith on behalf of Corridor Television, LLP, licensee of television station KCWX, Fredericksburg, Texas, Facility ID 24316, are the original and four copies of a Reply to Opposition to Petition for Reconsideration of the *Seventh Report and Order on Advanced Television Systems*, MB Docket No. 87-268.

Should additional information be necessary in connection with this matter, kindly communicate directly with the undersigned.

Respectfully submitted,



James A. Stenger

Encl.

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Before the
Federal Communications Commission
Washington, DC 20554

FILED/ACCEPTED
OCT 26 2007
Federal Communications Commission
Office of the Secretary

In the Matter of

Advanced Television Systems
and Their Impact upon the
Existing Television Broadcast
Service

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MB Docket No. 87-268

To: The Commission

**Reply of Corridor Television LLP,
Licensee of KCWX, Fredericksburg, Texas
to Opposition of KTBC Licensee, Inc.
To Petition for Reconsideration
of the Seventh Report and Order**

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Dated: October 26, 2007

TABLE OF CONTENTS

	<u>Page</u>
I. KTBC Has Shown Nothing To Justify Denial Of Reconsideration.	1
A. Grant Of The Waiver Will Not Violate The APA And Is Consistent With The Commission's Prior Findings On The Record.....	2
B. The Public Interest Will Best Be Served By Use Of Channel 8.....	5
II. Conclusion.	7

**Before the
Federal Communications Commission
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To: The Commission

**Reply of Corridor Television LLP,
Licensee of KCWX, Fredericksburg, Texas
to Opposition of KTBC Licensee, Inc.
To Petition for Reconsideration
of the Seventh Report and Order**

Corridor Television LLP ("Corridor"), licensee of television station KCWX, analog Channel 2, Facility Id. 24316, Fredericksburg, Texas, through its undersigned counsel and pursuant to Section 1.106(h) of the Commission's Rules, hereby replies to the Opposition filed by KTBC Licensee, Inc. to the Corridor petition for reconsideration of the *Seventh Report and Order and Eighth Further Notice of Proposed Rulemaking In the Matter of Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service*, MB Docket No. 87-268, FCC 07-138, 42 CR 1 (Aug. 6, 2007) ("the *Seventh Report and Order*") with regard only to the denial of the request of Corridor for a change in its TCD to channel 8 and the denial of its waiver request in connection therewith, *Seventh Report and Order* at paras. 76 -78, and in support hereof respectfully shows as follows:

I. KTBC Has Shown Nothing To Justify Denial Of Reconsideration.

KTBC argues two points, neither of which has merit. KTBC argues that, "it would violate the Administrative Procedure Act for the Commission to grant Corridor a waiver of the

0.1 percent current standard, in effect applying the 0.5 percent standard prematurely.”¹ KTBC further argues that KCWX would suffer interference from KTBC and KLRN.² Corridor addresses each contention below.

A. Grant Of The Waiver Will Not Violate The APA And Is Consistent With The Commission’s Prior Findings On The Record.

The contention of KTBC that grant of the waiver requested by KCWX would “violate the Administrative Procedure Act” and “apply [a proposed standard] prematurely,” is squarely rebutted by the Commission’s holding in the *Qualcomm* case. The Commission held in the *Qualcomm* case that granting a waiver does not require a rule making proceeding under the APA as alleged by KTBC.³ In *Qualcomm*, the Commission granted a waiver to allow mobile television interference to DTV stations up to 0.5 percent from October 13, 2006 through October 13, 2007, with the allowed interference waiver rising to 1.0 percent effective October 14, 2007, and 1.5 percent on October 14, 2008.⁴ KCWX could operate on Channel 8 with full power at less than 1.0 percent interference.⁵ KCWX requests only a limited waiver to cause less than 0.5 percent interference to KTBC, while the mobile television interference waiver ceiling increased to 1.0 percent on October 14, 2007, and KCWX would be fully justified in asking for a waiver of up to 1.0 percent based on *Qualcomm*.

¹ Opposition at 2-3.

² Opposition at 3.

³ Compare Opposition at 3 with *Qualcomm Incorporated Petition for Declaratory Ruling*, WT Docket No. 05-7, 21 FCC Rcd 11683, 39 CR 903 (October 13, 2006) (“*Qualcomm*”), at para. 40 (“Additionally, we need not address the parties’ arguments that any Commission issuance of a declaratory ruling establishing a de minimis interference exception is in violation of the APA, as we address Qualcomm’s request for relief in the waiver context.”)

⁴ “Accordingly, for the first full year after the release of this Order [released October 13, 2006], we will consider interference from Qualcomm stations affecting a protected TV/DTV station of up to 0.5 percent of the population within the Grade B contour of a protected TV station or DTV noise-limited service contour, without discounting for cable and satellite penetration, to be de minimis and therefore acceptable. For the second year [beginning October 14, 2007], the de minimis exception will be increased to 1.0 percent, and it will be further increased to 1.5 percent for the remainder of the DTV transition.” *Qualcomm* at para. 30.

⁵ Specifically, at full power on Channel 8, KCWX would cause only 0.76 percent interference to KTBC, less than the 1.0 percent waiver standard for mobile television that went into effect on October 14, 2007.

Even if we ignore the *Qualcomm* decision with regard to mobile television, KTBC offers nothing to support the contention that granting a waiver to KCWX to cause less than 0.5 percent interference to KTBC would be premature. KTBC does not dispute that operation of KCWX on channel 8 with 15 kW non-directional ERP at 413 meters HAAT would cause less than 0.5 percent interference to KTBC. Nor does KTBC dispute that the Commission found, based on the extensive record throughout the DTV proceedings, that interference of 2.0 or less is *de minimus*,⁶ and that interference of 0.5 percent or less is equivalent to *zero*.⁷ KTBC offers no rational basis for denying the requested waiver under these circumstances.

The compromise⁸ offered by KCWX is rejected by KTBC without basis because KTBC will suffer only *de minimus* interference from a grant of the requested waiver. It is not necessary for the new 0.5 percent rule to be adopted for KCWX's waiver to be considered *de minimus*. The Commission's proposal to change the interference standard would not *increase* the existing standard, it would *reduce* it, from 2.0 percent to 0.5 percent. The Commission does not propose to eliminate or repeal the 2.0 percent standard, but only to add a note that will require compliance with the 0.5 percent standard in addition to the existing rule.⁹ As such, the Commission has never and will not now reverse its prior findings based on the extensive record in the DTV proceedings that 2.0 percent interference is *de minimus*.

Not only is the requested waiver *de minimus* under the existing 2.0 percent rule, the revised waiver request amounts to *zero* interference to KTBC under the existing DTV

⁶ The existing rule, 47 C.F.R. §73.623(c)(2), treats predicted interference of up to 2 percent of the population served by a station as *de minimus*, subject to a 10 percent total interference cap that is not relevant here.

⁷ *Third Periodic Review*, MB Docket No. 07-9, DA 07-3518 (August 6, 2007) at paras. 104-106.

⁸ The Commission chose to apply an 0.1 percent interference cap to the third round DTV election process and chose to decline to waive this cap to allow KCWX to operate on Channel 8 with full power even though such operations would have caused far less than the 2.0 percent interference that the Commission previously determined to be *de minimus*. Rather than appeal this decision, KCWX chose to offer a compromise that KCWX would operate at reduced power such that the interference level would be less than 0.5 percent.

⁹ A note will be added to Section 73.623(a) to the effect that compliance also is required with proposed new rule 73.616. *Seventh Report and Order*, Appendix A, proposed rule changes, nos. 1 and 2.

application processing rule in effect since 1998. In proposing the *reduction* in the *de minimus* interference standard from 2.0 percent to 0.5 percent the Commission found and expressly stated that interference of 0.5 percent or less amounts to *zero* interference.¹⁰ The Commission expressly affirmed based on the record that the margin for error in the existing interference models requires the use of the rounding methodology that has been in effect since 1998 and that interference predictions of 0.5 percent or less are rounded to *zero*.¹¹ KTBC fails to show that under the existing processing DTV application processing rules KTBC will suffer anything more than *zero* interference from operation of KCWX on channel 8 with the facilities now proposed by KCWX.

KTBC also fails to address that KCWX requested that a decision on the KCWX waiver request be held in abeyance until the Commission adopts the 0.5 percent interference standard. KTBC further fails to address that KCWX, as a singleton with a top mounted antenna, will not commence operations on channel 8 until the 0.5 percent standard is in effect. KTBC's refusal to agree to the compromise offered by KCWX, operation on channel 8 with 15 kW non-directional ERP at 413 meters HAAT, is unreasonable since KTBC will never suffer any interference from KCWX that amounts to more than *zero* interference under the applicable rules.

In sum, KCWX could operate with full power on channel 8 and cause less than 1.0 interference to KTBC.¹² KCWX nevertheless offered a compromise to operate at reduced power such that KCWX will comply with the proposed *reduction* in the *de minimus* interference standard from 2.0 percent to 0.5 percent and thereby cause what the Commission holds is *zero* interference to KTBC. This compromise is more than reasonable and KTBC has shown no rational basis to refuse to accept it.

¹⁰ See note 7 above.

¹¹ See note 7 above.

¹² See note 3 above.

B. The Public Interest Will Best Be Served By Use Of Channel 8.

Given that KTBC has no rational basis to object to receiving *zero* interference from the proposed KCWX operations on channel 8, KTBC advances a second point that KCWX would suffer interference from KTBC (and KLRN) on channel 8. KTBC compares channel 8 with the existing operations of KCWX on channel 2 as an analog station. This comparison is illusory. Continuing to operate on channel 2 in an analog format is not an option. KCWX must cease all such operations in little over a year. The pending question is what alternative will best serve the public interest. Channel 8 with the proposed facilities will best serve the public interest.

KCWX demonstrated that Channel 5 as a low VHF band channel is undesirable for post-transition DTV operation:

[I]t is well known within the industry that low-band VHF DTV operation is susceptible to interference from other signals during certain times of the year. In addition, the reception of low-band VHF DTV is susceptible to impulse noise and therefore undesirable for post-transition DTV operation.¹³

Moreover, it is well-known that the Commission sought to minimize the number of post-transition low-band VHF channel assignments throughout these DTV proceedings. The assignment of channel 5 to KCWX is an exception to the Commission's policy of avoiding low-band VHF channel assignments for post-transition DTV operations. KTBC offers nothing to rebut the expert testimony submitted by KCWX to show that channel 5 is not preferable to channel 8 due to the problems associated with low-band VHF channels. Thus, the expert testimony of Cohen Dippel and Everist, P.C. on this point stands un-rebutted by KTBC.

KTBC also fails to rebut the expert testimony of Cohen Dippel and Everist, P.C. that a UHF channel is not suitable for the KCWX service area:

¹³ Further Comments and Engineering Statement of Corridor filed June 12, 2007, Exhibit A, Engineering Statement of Cohen, Dippel and Everist, P.C. at pages 1-2.

In addition to the noise and reception issues in the lower VHF band, the UHF band also would not be suitable for post-transition operation of KCWX-DT. Much of the population currently served by KCWX(TV) is located in the outlying areas near the edge of its Grade B contour and service to these households may be jeopardized by propagation losses if KCWX-DT was to be assigned a post-transition channel in the UHF band.¹⁴

KTBC further ignores and fails to rebut KCWX's point that UHF channels are too expensive to construct and operate in this rural service area. In sum, KTBC offers no basis to ignore the un-rebutted, expert testimony in the record that channel 8 is the best-available channel for post-transition DTV operation of KCWX.¹⁵

A waiver is justified where it allows the use of the best available alternative.¹⁶

Channel 8 is the alternative that will best serve the public who seek to view KCWX based on the un-rebutted evidence in the record. Channel 8 will not harm the public who view KTBC (or KLRN) because the predicted interference to their viewers will be less than 0.5 percent under the compromise proposed by KCWX. The refusal of KTBC to agree to the compromise proposal of KCWX is unreasonable. As a result, the Commission should grant the requested waiver to allow KCWX to move forward and complete transition to channel 8 by the DTV deadline.

¹⁴ Further Comments and Engineering Statement of Corridor filed June 12, 2007, Exhibit A, Engineering Statement of Cohen, Dippel and Everist, P.C. at page 2.

¹⁵ KTBC also fails to rebut that viewers of KCWX who do not subscribe to cable or satellite are likely to use outdoor antennas to view KCWX-DT as the Commission found based on extensive expert testimony as to the manner in which over-the-air television reception actually occurs. *Report to Congress on the Satellite Home Viewer Act*, ET Dkt. No. 05-182, FCC 05-199 (Dec. 9, 2005) at paras. 38 – 41. Based upon these un-rebutted prior findings, KCWX does not expect to suffer the reduction in viewers predicted by KTBC.


¹⁶ E.g., *WTCN Television, Inc.*, 14 FCC 2d 870, 14 RR 2d 485 (Oct. 17, 1968)(Where only one antenna farm is available, a waiver is appropriate to allow co-location of all stations at that antenna farm). Channel 8 is the best available alternative and grant of the *de minimus* waiver is appropriate to allow use of channel 8, thereby co-locating KCWX, KTBC and KLRN in the upper VHF band, just as a waiver was granted in *WTCN* to allow all of the stations to be co-located at the same antenna farm.

II. Conclusion.

Wherefore, for the foregoing reasons, Corridor respectfully requests that the Commission reconsider the *Seventh Report and Order* only to the limited extent requested herein, change the TCD of KCWX, Fredericksburg, Texas to channel 8 with 15 kW non-directional ERP at 413 meters HAAT, and grant a temporary, *de minimus* waiver of the 0.1 percent interference standard pending adoption of the 0.5 percent standard or find that such waiver request is unnecessary under the current DTV application processing methodology.

Respectfully submitted,

Corridor Television LLP

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Its Counsel

Dated: October 26, 2007

CERTIFICATE OF SERVICE

I, Roberta Muscarella, hereby certify that on October 26, 2007, I served a copy of the foregoing Reply to Opposition to Petition for Reconsideration by first class mail, postage prepaid on the following:

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Roberta Muscarella